

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Reexamination of Roaming Obligations)	WT Docket No. 05-265
Of Commercial Mobile Radio)	
Service Providers)	

REPLY COMMENTS OF
JOHN STAURULAKIS, INC.

John Staurulakis, Inc. (“JSI”) submits these Reply Comments in response to the invitation of the Federal Communications Commission (“FCC” or “Commission”) to comment on issues related to the negotiation of roaming agreements and matters pertaining to roaming of concern to small and rural wireless carriers.¹

JSI is a consulting firm offering regulatory, financial and business development services to more than two hundred rate-of-return rural local exchange carriers (“LECs”) throughout the United States and offering consulting services for affiliates of these LECs, which include small and rural wireless carriers. JSI has become acutely aware of the unreasonable, discriminatory and anticompetitive behavior that these wireless carriers have been subjected to in their efforts to obtain roaming arrangements with the nationwide and large regional wireless carriers. JSI surmises that this prejudiced behavior by these carriers has been a major reason for the sharp decline in roaming revenue for many small and rural wireless carriers, threatening the survival of these smaller carriers and the availability of wireless service to many rural areas of the country.

¹ See *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers; Automatic and Manual Roaming Obligations Pertaining to Commercial Mobile Radio Services*, WT Docket Nos 05-265, 00-193, Memorandum Opinion & Order and Notice of Proposed Rulemaking (rel. Aug. 31, 2005) (“NPRM”).

As demonstrated herein, market forces are not sufficient to address these abuses. Accordingly, JSI urges the Commission to take prompt action to ensure that nationwide and large regional wireless carriers cease all unreasonable and discriminatory actions in the context of roaming arrangements with other carriers.

I. The Record Clearly Demonstrates that Nationwide and Large Regional Wireless Carriers are Engaging in Unreasonable and Discriminatory Practices

A. Commenters Provide Abundant Evidence of Abuses

In its NPRM, the Commission sought specific evidence of unreasonable and discriminatory roaming practices and the impact on such practices on consumers.² In their comments, the nationwide wireless carriers sought to portray themselves as never acting in a discriminatory or anticompetitive manner in their dealings with small and rural carriers in matters related to roaming.³ In contrast, small and rural carriers and their associations provided specific evidence of unreasonable, discriminatory and anticompetitive behavior by the nationwide carriers and the adverse impact of these practices on consumers. For example, in its comments, RTG/OPASTCO cites a survey that it had taken of the associations' members and states,

² NPRM at para. 41 (“We seek specific evidence of wireless providers denying roaming agreements to other providers in a manner that harms consumers. We also seek comment on and evidence of whether large, nationwide carriers are preferring one another over other carriers in roaming agreements, and whether such a preference is a violation of section 202 of the Communications Act”).

³ See, e.g., Comments of T-Mobile USA, Inc. at ii (“As the fourth largest wireless carrier in the United States, T-Mobile actively seeks additional coverage, as do smaller and regional carriers. T-Mobile’s experience is that competition and market forces constrain its ability to act in an unreasonable manner toward its roaming partners”); Comments of Verizon Wireless at iii & 16 (“Verizon Wireless does not have any roaming agreements with rural providers that require the rural provider to pay more for roaming than what Verizon Wireless pays to the rural service provider. . . . Verizon Wireless does not have market power and does not use its size to obtain asymmetrical roaming agreements with small and rural carriers”); Comments of Cingular Wireless LLC (“Cingular”) at 21 (“There is no evidence of a widespread inability of small carriers to obtain roaming agreements, nor is there any evidence that nationwide carriers have market power”).

Simultaneously with the consolidation of the nationwide carriers, small rural carriers have experienced a spike in the cost for customers to roam on the nationwide carriers' networks and an increased unwillingness by the nationwide carriers to enter into roaming agreements or renew existing ones. . . . Absent the regulatory measures requested herein, many rural carriers are likely to go out of business, depriving many of their rural customers of *any* CMRS service.⁴

This is echoed by other associations that represent small and rural wireless carriers, NTCA and RCA.⁵

Several specific instances of abuses were recounted in the associations' comments and by small and rural wireless carrier commenters.⁶ As summed up by one commenter, these abuses by the nationwide wireless carriers adversely impact consumers in that they "place a heavy burden on smaller carriers by not being able to provide the customers with adequate service at a reasonable price."⁷

B. Further Evidence of Abuses

Some JSI company clients have reported that in many cases, the nationwide and large regional wireless carriers use their strong bargaining position to require that a rural carrier pay a

⁴ Comments of the Rural Telecommunications Group, Inc. and the Organization for the Promotion and Advancement of Small Telecommunications Companies ("RTG/OPASTCO") at 10 (noting that their members have reported that roaming rates paid by their members to nationwide carriers range from \$0.35 to \$0.99 per minute). See also NPRM at paras. 38-39 (citing filings made by small rural wireless providers such as Leaco Rural Telephone Cooperative, Inc and Mid-Tex Cellular, Ltd. in which they report that "CMRS industry mergers have significantly reduced their nationwide roaming options" and that "the amount of roaming traffic they exchange with other carriers has been significantly reduced as the large carriers enter into roaming agreements with other larger carriers and avoid roaming on smaller carriers' networks").

⁵ See Comments of the National Telecommunications Cooperative Association ("NTCA") at 3 ("NTCA members complain that large carriers block their customers from roaming on the small carriers' networks, or engage in a practice that favors roaming on other large, nationwide carriers rather than on the rural carriers' network"); Comments of the Rural Cellular Association ("RCA") at 2 ("RCA members denied the opportunity to participate in automatic roaming agreements stand to lose large numbers of customers who would act to assure themselves of access to wireless services in more markets even though they may lose, perhaps unknowingly, service availability in portions of the rural markets where they live and work each day").

⁶ See, e.g., Comments of RTG/OPASTCO at 11-13; Comments of NTCH, Inc. at 3-4 ("One [national carrier] gave us a roaming agreement early on for 50 cents per minute and an additional 15 cents for long distance The other refused to discuss terms until this recent Commission NPRM on roaming was initiated").

⁷ Comments of North Dakota Network Company ("SRT Wireless") at 2.

higher roaming fee than the nationwide carrier is required to pay. As demonstrated in comments, small rural wireless carriers have no leverage in bargaining with the nationwide carriers regarding roaming arrangements resulting in the nationwide carriers dictating the terms under which roaming will occur.⁸

Even where the nationwide wireless carriers have “partnered” with the rural wireless carriers,⁹ in some cases, these carriers have used their strong bargaining position to make unreasonable demands upon the rural wireless carriers. If the rural carriers are not able to comply, automatic roaming on their network is curtailed or even denied. For example, it has been reported that one nationwide carrier requires that to be part of its “alliance,” the rural carriers must meet performance, build-out and feature requirements dictated by the nationwide carrier. If these are not met, the rural carrier is penalized. For example, if the rural wireless carrier has too many blocked calls, the roaming rate charged by the rural carrier to the nationwide carrier declines until the rural carrier meets the performance standard. If the problem cannot be corrected, the nationwide carrier lowers the rural carrier’s “preference” on its “preferred roaming list” which results in less roaming revenue for the rural carrier.¹⁰

Further, both in traditional roaming arrangements and “alliances,” it has been reported that nationwide carriers refuse to negotiate a roaming rate that is at a level necessary for the rural carrier to cover its costs. In the “partnership” with a nationwide carrier cited above, it has been

⁸ See, e.g. Comments of NTCA at 3 (“[Nationwide carriers] are aware that rural carriers need the ability to offer roaming to their customers to make their service attractive. . . . This unequal bargaining power gives the large providers the ability to offer a ‘take it or leave it’ roaming agreement in which they have pre-determined the terms and conditions of roaming in a manner favorable to themselves. There is no actual ‘negotiation’”).

⁹ See, e.g., Comments of Cingular at 19; Comments of Sprint Nextel at 6.

¹⁰ As demonstrated in comments, nationwide carriers have a practice of placing other carriers’ system identification numbers (“SIDs”) into handsets based on a “preferred roaming list” (“PRL”). See e.g., Comments of RTG/OPASTCO at 12.

reported that although the costs of complying with the performance, build-out and feature requirements are significant, the nationwide carrier refused to adequately compensate the rural carrier. Instead, the nationwide carrier required increasingly higher volume discounts to be applied to the per-minute roaming fee that was charged to the nationwide carrier's subscribers. After the rural carrier calculated the impact of the discounts, it found that the projected revenues were insufficient to cover the existing network costs of carrying the traffic, not to mention the additional costs of the upgrades. When the nationwide carrier refused to accept any other offer on rates, the rural carrier was faced with either conceding to the demands of the nationwide carrier and denying itself the ability to cover its costs or denying the ability of its subscribers to roam on the nationwide carrier's network.¹¹ The rural carrier, of course, conceded.

II. Immediate Action Must Be Taken to Address these Abuses

In its NPRM, the Commission sought comment on whether existing complaint processes were adequate to address abuses or whether an automatic roaming rule should be adopted.¹² The existing complaint process, however, is not a feasible alternative for small and rural carriers.¹³ Accordingly, specific action by the Commission is required to address the abuses.

¹¹ Because of the different technologies used to provide CMRS service, the choices for roaming partners are restricted to the nationwide or regional carriers that use the same technology as the rural carrier. As reported by some wireless carriers, this is true in the current environment even though the analog requirement has yet to be totally phased out, since some nationwide carriers have already significantly reduced the amount of analog to make room for their GSM or advanced CDMA technologies. *See* Comments of NTCA at 2 ("if roaming is not available, the rural customer is left with the Hobson's choice of CMRS service at home, or CMRS service on the road, but no opportunity to enjoy both").

¹² *See* NPRM at para. 34.

¹³ *See* Comments of RTG/OPASTCO at 16 ("For a small carrier, the FCC's complaint process is both expensive and time-consuming. Further, the complaint process is not, as a practical matter, readily available to the consumers who are being harmed by the large carriers' abuse of their market power").

Regarding the imposition of an automatic roaming rule, in its NPRM, the Commission noted that in its *2000 CMRS Roaming NPRM*, it had reaffirmed its previous finding that “ubiquitous roaming on CMRS systems is important to the development of a seamless, nationwide ‘network of networks’”¹⁴ and it then concluded:

to the extent competition in the CMRS market has eliminated the means or economic incentives for certain CMRS providers to discriminate unreasonably in the provision of roaming, or otherwise to engage in unjust or unreasonable practices, the imposition of a roaming requirement would not be in the public interest. Thus, the Commission stated, it may be in the public interest to impose a roaming requirement ‘[o]nly where market forces alone are not sufficient to ensure the widespread availability of competitive roaming services, and where roaming is technically feasible without imposing unreasonable costs on CMRS providers.’¹⁵

In their comments, RTG/OPASTCO and NTCA demonstrate that these criteria are met and that an automatic roaming rule is required. As explained by RTG/OPASTCO in their comments:

The economics of roaming not only leads to price gouging of rural carriers, it also provides a strong incentive for nationwide carriers to refrain from entering into roaming agreements with rural carriers. Nationwide carriers are willing to forgo roaming with rural carriers since their customers are less dependent upon roaming, especially in rural areas that are off of main highways. . . . A rule mandating automatic roaming in areas served by rural carriers would keep nationwide CMRS providers from holding their customers hostage on their proprietary networks. . . .¹⁶

¹⁴ NPRM at para. 8 citing *Automatic and Manual Roaming Obligations Pursuant to Commercial Mobile Radio Services*, WT Docket No. 00-193, *Notice of Proposed Rulemaking*, 15 FCC Rcd 21628 (2000) (“*2000 CMRS Roaming NPRM*”) at 21634, para. 15 (citing *Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services*, CC Docket 94-54, Second Report and Order and Third Notice of Proposed Rulemaking, 11 FCC Rcd 9462, 9467 at para. 8 (1996)).

¹⁵ NPRM at para. 8 citing *2000 CMRS Roaming NPRM* at 21635, para. 16.

¹⁶ Comments of RTG/OPASTCO at 6. *See* Comments of NTCA at 2-3 (“Large carriers will often build out systems covering highways and the more populated areas, capturing the most customers per tower. . . . The customers of large carriers are not dependent on roaming and there is little incentive for the carrier to negotiate roaming agreements. Rural CMRS providers, in contrast, serve small, rural communities throughout the country, often far from major highways. . . .”).

Some of the other commenters, however, propose that the Commission address the abuses in other ways. RCA urges the Commission to adopt “rules that impose good faith, reciprocal bargaining obligations upon CMRS carriers”¹⁷ United States Cellular Corporation recommends the adoption of a “policy statement requiring that wireless carriers continue to make their networks available to the customers of other carriers for ‘automatic’ roaming on reasonable terms and conditions.”¹⁸ SRT Wireless favors a “‘market-based solution’ rather than mandatory agreements” yet believes that “nationwide carriers should be required to make their networks available to all roaming partners with identical terms and conditions, or negotiate in ‘good-faith’ on a fair market-based pricing.”¹⁹

No matter which course of action the Commission decides to take, it is clear that the existing complaint processes is not sufficient and that specific action must be taken by the Commission to address the abuses.

III. Conclusion

Over five years ago, in the context of the FCC’s request for comment on whether an automatic roaming rule should be required, many small and rural wireless carriers reported specific instances where nationwide wireless carriers were engaging in unreasonable, discriminatory and anti-competitive behavior in their dealings with the smaller carriers in matters related to roaming. Last year, when the Commission sought comment on proposed mergers of nationwide and large regional wireless carriers, additional instances of such practices by the

¹⁷ Comments of RCA at 1.

¹⁸ Comments of United States Cellular Corporation at 2.

¹⁹ Comments of SRT Wireless at 3.

larger carriers were reported. As demonstrated herein, in response to the Commission's recent NPRM, several more instances of these types of practices have been provided as well as evidence that the practices are adversely impacting many small and rural wireless carriers. Accordingly, the Commission now has before it a voluminous record demonstrating not only that nationwide and large regional wireless carrier engage in such practices but also that current mechanisms to address the practices are not effective.

These abuses impact not only the rural carriers but, more importantly, the rural customers that they serve. It is vital, therefore, for the advancement of the public interest, that the Commission take swift action and require all nationwide and large regional wireless carriers to cease any unreasonable and discriminatory actions in the context of roaming arrangements with other carriers.

Respectfully submitted,

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